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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) **CASE NO. CR-20-00021-VC**
Plaintiff,)
v.)
DANILLO BUSTILLO-SEVILLA,) **UNITED STATES' SENTENCING**
Defendant.) **MEMORANDUM**
Date: March 23, 2020
Time: 2:30 p.m.

I. INTRODUCTION

On December 12, 2019, the defendant, Danillo Bustillo-Sevilla, distributed a mixture and substance containing cocaine base to an undercover police officer in the vicinity of Ninth and Mission Streets, just south of the Tenderloin neighborhood in San Francisco, California. On January 16, 2020, a federal grand jury indicted defendant on one count of distribution of cocaine base. On March 10, 2020, the defendant pleaded guilty to that count without the benefit of a plea agreement.

For the reasons set forth below, the United States respectfully requests that the Court sentence the defendant to a term of three months of imprisonment, to be followed by three years of supervised release which shall include three months of community confinement, the standard conditions requested

1 by Probation, and a stay-away condition from the Tenderloin neighborhood of San Francisco. Given the
 2 need for deterrence, and the need to protect the public, the government submits that this would be a
 3 reasonable sentence based on consideration of the United States Sentencing Guidelines and the factors
 4 outlined in 18 U.S.C. § 3553(a).

5 **II. BACKGROUND**

6 **A. Offense Conduct**

7 On December 12, 2019, members of the San Francisco Police Department (SFPD) Narcotics
 8 Division and Tenderloin Station were conducting a “buy/bust” operation in and around the Tenderloin
 9 neighborhood in San Francisco. As part of the operation, the SFPD officers photocopied and
 10 timestamped marked city funds (MCF) to be used in the operation. *See* Declaration of Barbara J.
 11 Valliere (hereinafter “Declaration”), ¶ 2 & Ex. A (SFPD Incident Report – Narrative). The MFC
 12 included one ten-dollar bill (MF 595338158) and two five-dollar bills (ME 45765777 B and ML
 13 6680351 H). *Id.*

14 At about 9:00 a.m., the undercover “buy” officer saw a Hispanic male, later identified as Danillo
 15 Bustillo-Sevilla, standing near Ninth Street in the apparent act of counting money. Ex. A (SFPD
 16 Incident Report – Narrative). The undercover officer approached the defendant and said “Let me get
 17 two dimes.” *Id.* When the defendant responded “I only have nickels,” the undercover officer handed
 18 him a ten dollar bill and two five dollar bills and said “Let me get a five.” *Id.* The defendant spit some
 19 objects which turned out to be five rocks of cocaine base, into his hand and gave them to the undercover
 20 officer. *Id.* The officer then gave an arrest signal to SFPD officers who were observing, and he left the
 21 area. *Id.*

22 Two SFPD officers found Bustillo-Sevilla at 130 Ninth Street and placed him under arrest. *Id.*
 23 While defendant was detained at the arrest scene, the “buy” officer was driven past and identified him as
 24 the man who had just sold him crack cocaine. *Id.* During a search incident to arrest, the officers
 25 recovered two individually wrapped rocks of suspected cocaine from his hooded sweatshirt. The
 26 officers also recovered the ten-dollar bill (MG 24474453C) and two five-dollar bills (MC 65119757 B
 27 and ML 83054117 C) from Bustillo-Sevilla’s right front pocket. *Id.* A test of the drugs sold to the
 28 “buy” officer revealed a positive result for cocaine base. *Id.*

1 On January 16, 2020, a federal grand jury returned an indictment charging defendant with one
 2 count of distribution of cocaine base under 21 U.S.C. § 841(a)(1) and (b)(1)(C). Dkt. 1. On March 10,
 3 2020, the defendant pleaded guilty to the charge in the indictment without the benefit of a plea
 4 agreement. Dkt. 7. At the March 10 hearing, defendant's counsel requested an expedited sentencing,
 5 and the Court agreed to forgo a presentence investigation and presentence report. Dkt. 7.

6 Upon his arrest, defendant did not provide a home address, a telephone number, or a place of
 7 employment. Ex. A (SFPD Incident Report – page 1).

8 **B. The Defendant's Sentencing Guidelines Calculation**

9 The United States has calculated the United States Sentencing Guidelines as follows:

10 1. Base Offense Level, U.S.S.G. § 2D1.1(c)(14):	12
11 2. Acceptance of Responsibility, U.S.S.G. § 3E1.1:	-2
12 3. Adjusted Offense Level:	10

13 The government understands, but has not confirmed, that defendant's criminal history category is
 14 I. If defendant's criminal history category is I, then the defendant's advisory Guidelines range is 6 to 12
 15 months' imprisonment, which falls within Zone B of the Guidelines Sentencing Table. *See* U.S.S.G. Ch.
 16 5, Pt. A. Under U.S.S.G. § 5C1.1(c)(2), the minimum term of a Zone B sentence may be satisfied by a
 17 sentence of imprisonment that includes a term of supervised release with a condition that substitutes
 18 community confinement or home detention, provided that at least one month is satisfied by
 19 imprisonment.

20 **III. DISCUSSION**

21 **A. Legal Standard**

22 The Court should impose a sentence sufficient but not greater than necessary to reflect the
 23 seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate
 24 deterrence; to protect the public; and to provide the defendant with needed educational or vocational
 25 training, medical care, or other correctional treatment. *United States v. Carty*, 520 F.3d 984, 991 (9th
 26 Cir. 2008); *see also* 18 U.S.C. § 3553(a). The Court should begin the process of determining an
 27 appropriate sentence by calculating the correct sentencing range under the advisory Guidelines. *Id.*

1 After determining the appropriate advisory Guidelines calculation, the Court should then
 2 evaluate the sentence for substantive reasonableness in light of the factors set out in Section 3553(a).
 3 *Carte*, 520 F.3d at 991-93. Under Section 3553(a), in arriving at the appropriate sentence for the
 4 defendant, the Court should consider these factors applicable to this case, among others:

- 5 (1) The nature and circumstances of the offense and the history and characteristics of the
 defendant;
- 6 (2) The need for the sentence imposed to reflect the seriousness of the offense, to promote
 respect for the law, and to provide just punishment for the offense;
- 7 (3) The need for the sentence imposed to afford adequate deterrence to criminal conduct;
- 8 (4) The need for the sentence imposed to protect the public from further crimes of the
 defendant; and
- 9 (5) The need to avoid unwarranted sentence disparities among defendants with similar
 records who have been found guilty of similar conduct.

12 **B. Sentencing Recommendation**

13 The government recommends that the Court sentence the defendant Danillo Bustillo-Sevilla be
 14 sentenced to three months of imprisonment, followed by three years of supervised release that should
 15 include three months of community confinement, the standard conditions requested by Probation and a
 16 stay-away condition from the Tenderloin neighborhood of San Francisco. This recommended sentence
 17 would be sufficient but not greater than necessary to reflect the purposes of sentencing, based on a
 18 consideration of the advisory Guidelines and the Section 3553(a) factors.

19 *First*, the government's recommended sentence reflects the need for adequate deterrence that
 20 would promote respect for the law. Although defendant has no prior criminal convictions, defendant
 21 committed the instant offense and his other drug trafficking activity in the Tenderloin while in the
 22 United States illegally. The government's recommended sentence is thus the minimum sentence
 23 required to ensure adequate deterrence that would promote respect for the law.

24 *Second*, the defendant's offense is serious. The amount of narcotics at issue in this case may
 25 not be high compared to other cases that come before this Court. Nonetheless, drug dealing in the
 26 Tenderloin cases harm and danger to some of the most vulnerable persons in the community. The
 27 growing number of drug overdose deaths in the city have been concentrated in the Tenderloin
 28 neighborhood and immediately surrounding area. *See* Declaration, ¶ 3, Ex. B (Phillip O. Coffin, M.D.,

1 Substance Use Trends in San Francisco Through 2018, Center on Substance Use and Health,
 2 Department of Public Health, City and County of San Francisco (Dec. 2019), at 7.¹ More than half of all
 3 the drug sales incidents booked or cited by the San Francisco Police Department took place in the
 4 Tenderloin district – specifically, “56 percent . . . by far the highest of any police district in the City” in
 5 fiscal year 2017-2018. *See Declaration, ¶ 4, Ex. C* (Budget and Legislative Analyst, City and County of
 6 San Francisco Board of Supervisors, Policing and Criminal Justice Costs Related to Open Air Drug
 7 Dealing in the Tenderloin, South of Market, and Mid-Market Neighborhoods (Apr. 1, 2019), at 1.²

8 *Third*, the government’s recommended sentence, where defendant serves three months of
 9 imprisonment and then three months of community confinement while on supervised release, is
 10 specifically designed to protect the public from further crimes by the defendant. Community
 11 confinement for the initial portion of defendant’s supervised release provides some assurance that
 12 defendant will be precluded from committing additional crimes. Moreover, while defendant will likely
 13 be deported after serving his term of imprisonment thereby suspending any term of supervised release,
 14 imposing a condition of additional community confinement attendant to defendant’s supervised release
 15 term provides a strong disincentive for defendant to illegally return to the country to sell drugs.

16 *Fourth*, while it is true that defendant will likely be deported when he is released from custody,
 17 to ensure that, should he return to the United States defendant is forever dissuaded from selling drugs in
 18 the Tenderloin, the government is requesting that the Court impose a special condition that requires the
 19 defendant to stay out of that area. In short, to ensure the protection of that specific community, the
 20 government believes that the following condition is appropriate in light of defendant’s history of drug
 21 trafficking in the Tenderloin:

22 **Special Condition (Tenderloin Stay Away)**

23 The defendant shall not be present in the area in San Francisco bordered on the west by Polk
 24 Street and South Van Ness Avenue, on the north by Geary Street, on the east by Powell Street
 25 and 3rd Street, and on the south by Mission Street, with the following exceptions: 1) he may
 26 enter the area to attend any court proceedings at 450 Golden Gate Avenue, or after requesting
 27 and receiving approval from his assigned U.S. Probation Officer; and 2) he may travel on BART,
 28 MUNI, or other public transportation through the area, but may not then alight from said
 transportation and enter the area on foot.

1 Available at <https://ndews.und.edu/sites/ndews.und.edu/files/San-Francisco-Substance-Use-2019-Annual-Report-Trends-Through-2018.pdf>.

2 Available at https://sfbos.org/sites/default/failes/BLA_042519_Open_Drug_Dealing_Sup_Haney.pdf.

1 **III. CONCLUSION**

2 For the reasons stated above, the United States recommends that the Court sentence the
3 defendant to three months of imprisonment, to be followed by three years of supervised release to
4 include three months of community confinement, the standard conditions requested by Probation, and a
5 stay-away condition from the Tenderloin neighborhood of San Francisco.

6

7 DATED: March 16, 2020

Respectfully submitted,

8 DAVID L. ANDERSON
9 United States Attorney

10 */s/ Barbara J. Valliere*
11 BARBARA J. VALLIERE
12 Assistant United States Attorney